

## **REMARKS**

### **I. The Pending Claims and the Amendments To the Claims**

With the entry of the amendments set forth above, Claims 1-11 and 18 stand withdrawn as directed to a non-elected invention. Claims 12-17 remain pending. Claim 12 is the only pending independent claim. Newly-presented Claims 19-23 have been added to the pending claims, with each of Claims 19-23 being dependent claims. Thus, in total the pending claims under examination are Claims 12-17 and 19-23.

Newly-presented Claim 19 is dependent upon Claim 12 and recites the seal as being through the bag and not through the patch. Support for this claim can be found in the specification at, for example, Page 4 line 15. New Claim 20 is also dependent upon Claim 12 and recites the seal as being through-the bag and the patch. Support for Claim 20 can be found in the specification at, for example, Page 4 lines 16-17. New Claim 21 is dependent upon Claim 12 and recites the bag as an end-seal bag, with the patch overhanging both side edges of the bag. Support for Claim 21 can be found in the specification at, for example, Page 4 lines 4-5, together with Page 4 lines 20-21. New Claim 22 is dependent upon new Claim 21, and recites the seal as being through the patch and the bag. Support for Claim 22 can be found in the specification at, for example, Page 4 lines 16-17. New Claim 23 is dependent upon new Claim 21, and recites each lay-flat side of the side of the bag as having a patch adhered thereto, with both patches overhanging both side edges of the bag, with overhanging portions of each of the patches being adhered to one another. Support for Claim 23 can be found in the specification at, for example, Page 4 line 20 through Page 5, line 1. The amendments include no new matter.

## II. The Rejection of Claims 12-17 as Obvious over BRADY '688 in view of SASANO '437

In Section 3 of the 16 August 2004 Office Action, Claims 12-17 are rejected under 35 USC 103 as unpatentable over International Application No. WO 96/00688 to Brady et al ("BRADY '688") in view of European Publication No. 0 622 437, to Sasano et al ("SASANO '437"). The Office Action states that BRADY '688 discloses a patch bag in which the patch is adhered to the bag with an adhesive, with BRADY '688 disclosing all of the features recited in the claims except: (a) that the heat seal is capable of withstanding a temperature of at least 70°C for at least 4 hours and (b) the adhesive comprising polyurethane capable of maintaining adhesion of the patch to the bag at 60°C for at least 4 hours.

The Office Action goes on to state that SASANO '437 discloses a polyurethane adhesive capable of laminating multilayer composite films such as polyethylene, polypropylene, nylon, polyester and polyvinyl chloride films and metal foil and that the polyurethane adhesive has excellent adhesive properties, acid resistance, and hot water resistance. The Office Action further states that it would have been obvious to have used the polyurethane adhesive to adhere the patch to the bag, in order to obtain better resistance to acid and hot water. Finally, the Office Action states that because the patch bag of BRADY '688 is formed by the same process and with the same materials, the patch bag would comprise a heat seal capable of withstanding a temperature of at least 70°C for a period of at least 4 hours, and that the polyurethane adhesive would be capable of maintaining adhesion of the patch to the bag at a temperature of 60°C for at least 4 hours or at least 10 hours as claimed.

In response, Applicants contend that for several reasons the Office Action does not set forth a prima facie case of obviousness. First, Applicants contend that there is no motivation to modify the patch bag of BRADY '688 by substituting the urethane-based adhesive of SASANO '437 for the Rhoplex<sup>TM</sup> N619 thermoplastic acrylic adhesive in BRADY '688. That is, BRADY '688 discloses a patch bag for packaging fresh bone-in meat products. There is no teaching or suggestion in BRADY '688 that the acrylic-based adhesive used to adhere the patch to the bag is in any way unsatisfactory. There is also no teaching or suggestion in BRADY '688 that the bone-in meat product may be cooked while it remains within the package made from the patch bag. Rather, the only teaching to this effect is Applicants' disclosure, which is not prior art. As such, the Office action derives its motivation to modify the adhesive from Applicants' disclosure, rather than from the prior art. The law is clear that the motivation cannot be derived from Applicants' disclosure. "The prior art must suggest the desirability of the claimed invention." See MPEP 2143.01. "The mere fact that the references can be combined or modified does not render the resultant combination obvious *unless the prior art also suggests the desirability of the combination.*" Again see MPEP 2143.01, emphasis added. The Office Action does not point out where either BRADY '688 or SASANO '437 *suggest the desirability* of modifying the seal layer and/or adhesive disclosed in BRADY '688. As such, the Office Action does not set forth a prima facie case of obviousness of any one or more of Claims 12-17.

Moreover, the Office Action does not point to any disclosure in SASANO '437 which would have motivated one of ordinary skill in the art to substitute the urethane-based adhesive for the acrylic based adhesive disclosed in BRADY '688. The Office Action attempts to generate motivation by referring to the disclosure in SASANO '437 of "excellent adhesive

properties, acid resistance, and hot water resistance.” However, none of these qualities provides motivation to change from the acrylic-based adhesive of BRADY ‘688 to the urethane-based adhesive of SASANO ‘437. The Office Action fails to point to any disclosure in SASANO ‘437 which would have led one of ordinary skill in the art to believe that the “excellent adhesive properties” of the urethane-based adhesive are any better than the adhesive qualities of the acrylic-based adhesive disclosed in BRADY ‘688. Moreover, one of ordinary skill in the art would not have had any reason to substitute any other adhesive for the acrylic-based adhesive disclosed in BRADY ‘688, as one of ordinary skill in the art would have been led to believe that the acrylic-based adhesive disclosed in BRADY ‘688 performs in a satisfactory manner, and that the adhesion of the patch to the bag does not need to be modified. As to “acid resistance”, there is no disclosure in BRADY ‘688 that the patch bag or the resulting packaged product is to come into contact with acid. Thus, acid resistance is not motivation to change from the acrylic-based adhesive to the urethane-based adhesive. Finally, there is no disclosure in BRADY ‘688 that “resistance to hot water” would be advantageous for the adhesive, as there is no teaching that the patch bag or the packaged product is to come into contact with hot water. In fact, one of ordinary skill in the art would have known that the bone-in meat product in BRADY ‘688 is packaged in the patch bag and thereafter refrigerated or kept cool in a retail meat case. In summary, there is simply no motivation to change from the acrylic-based adhesive of BRADY ‘688 to the urethane-based adhesive of SASANO ‘437.

Second, Applicants contend that the Office Action errs in stating that because the patch bag of BRADY ‘688 is formed by the same process and with the same materials as Applicants’ patch bag, the patch bag of BRADY ‘688 would comprise a heat seal capable of withstanding a

temperature of at least 70°C for a period of at least 4 hours, and that the polyurethane adhesive would be capable of maintaining adhesion of the patch to the bag at a temperature of 60°C for at least 4 hours or at least 10 hours as claimed. Applicants direct attention to the preferred barrier bag film in Table II of BRADY '688, i.e., see Page 22 of BRADY '688. This bag film has a seal layer made from "EVA #1", identified on Page 20 line 22 as ELVAX™ 3128 ethylene/vinyl acetate copolymer having a 9% vinyl acetate content. While ethylene/vinyl acetate copolymers are known to be relatively low melting polymers, ELVAX™ 3128 begins softening at 40°C and is partially melted at 70°C. [Applicants can provide a differential scanning calorimetry curve of ELVAX™ 3128 which shows that this polymer softens at 40°C and has begun to melt at 70°C.] As such, it is apparent that the heat seal of the inside layer of the bag tubing film to itself, this heat seal layer being composed of 100% ELVAX™ 3128, would not withstand 70°C for a period of 4 hours, as recited in Applicants' independent Claim 12.

Applicants note that while Page 7 line 12-16 of BRADY '688 lists many polymers for use in the heat seal layer, Page 7 line 15 discloses a preference for seal layers comprising polyolefin, more preferably polyolefin having less than 60 weight percent crystallinity. In general, the lower the crystallinity, the lower the melting point of the polymer. Moreover, one of ordinary skill in the art, reading BRADY '688, would realize that the packaged product is to be kept cool, as in a cold case at a grocery store. The relatively low melting point of the heat seal layer of the bag is advantageous because it is easier to form the heat seal than if the heat seal layer is made from a higher melting polymer. The ease of making the heat seal(s) to form

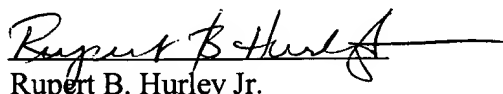
the bag, and the ease of sealing the bag closed after the bone-in meat product is placed inside the bag, motivate one of ordinary skill to use a heat seal layer composed of ELVAX™ 3128 as disclosed by BRADY '688. Thus, when considered as a whole, it is apparent that BRADY '688 would not have motivated one of skill in the art to have changed the seal layer of the bag film from the ELVAX™ 3128 ethylene/vinyl acetate copolymer to a higher melting polymer.

Finally, Applicants note that the Office Action fails to set forth a prima facie case of obviousness of the *combination* of (a) a heat seal capable of withstanding a temperature of at least 70°C for a period of at least 4 hours, together with (b) an adhesive capable of maintaining adhesion of the patch to the bag at a temperature of at least 60°C for a period of at least 4 hours. This combination of features is needed in order to provide the patch bag with the recited combination of time-temperature survivability of the heat seal and time-temperature survivability of the adhesion of the patch to the bag, so that the product packaged in the patch bag can be cooked while in the patch bag. Neither BRADY '688 nor SASANO '347 provides any motivation to change both the seal layer and the adhesive used to adhere the patch to the bag.

#### Conclusion

Applicants respectfully request reconsideration of the patentability of Claims 7-12, with a view towards allowance.

Respectfully Submitted,



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